UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,022	08/17/2006	David Shilliday	53982/323801	1007

23370 7590 03/30/2011

JOHN S. PRATT, ESQ
KILPATRICK TOWNSEND & STOCKTON LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA, GA 30309

EXAMINER	
BERGIN, JAMES S	

ART UNIT	PAPER NUMBER
3641	

NOTIFICATION DATE	DELIVERY MODE
03/30/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipefiling@kilpatricktownsend.com
jlhice@kilpatrick.foundationip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAR 2 9 2011

John S. Pratt, Esq.
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

In re Application of Shilliday et al. Application No. 10/560,022 Filed: August 17, 2006 For: DISTRIBUTED CHARGE INFLATOR SYSTEM	:	DECISION ON PETITION UNDER 37 CFR § 1.181

This is in response to applicants' submission denominated "Response To and Request for Withdrawal of Improper Notice of Non-Compliant Amendment" received February 22, 2011 which is being treated as a petition under 37 CFR 1.181 for Supervisory Review.

The petition is **GRANTED**.

A review of the record shows that a Non-Final Office action rejecting claims 15-24 was mailed on March 4, 2010; claims 1-14 and 25-28 were cancelled via a preliminary amendment. In a Response filed May 26, 2010, applicants cancelled claim 15 and rewrote claim 16 in independent form, thus no substantive amendment to claim 16 was made. On August 17, 2010 the Examiner made a requirement for restriction among four species identified as lacking unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. In a Response filed November 12, 2010, Applicants questioned the appropriateness of the "election-of-species requirement after having examined all claims of the application and after having received Applicant's challenge to the prima facie basis for the initial rejection." Applicants then elected species B as identified in the August 17, 2010 Office action and indicated that claims 16-23 are directed to the elected species.

In response to the Election, the examiner issued a Notice of Non-Responsive Amendment because "the applicants have not formally indicated whether the election of Species B is being made with traverse or without traverse." Petitioner asserts that MPEP 818.03 sets forth that an election in reply to a requirement ***may be made*** either with or ***without an accompanying traverse of the requirement*** (emphasis added by Petitioner). Thus, Petitioner argues, that an election was made "without an accompanying traverse of the requirement." MPEP 818.03(c) further sets forth that if an

applicant does not distinctly and specifically point out supposed errors in the restriction requirement, the election should be treated as an election without traverse and be so indicated to the applicant by use of form paragraph 8.25.02.

Although Applicants' election did not expressly include the phrase "with traverse" or "without traverse", Applicants' questioning of the appropriateness of the "election-of-species requirement after having examined all claims of the application and after having received Applicant's challenge to the prima facie basis for the initial rejection" tantamount to a traversal. Accordingly, the examiner should have considered the election as an election with traverse and proceeded with the examination of claims 16-23 and withdrawn claim 24 as not being directed to the elected species. However, assuming arguendo that applicants' questioning of the appropriateness of the election-of-species is not a traversal, MPEP 818.03(c) clearly indicates that it is appropriate for the examiner to treat the election as an election without traverse and to proceed with the examination of claims 16-23.

Accordingly, the Notice of Non-Responsive Amendment is improper and hereby withdrawn. The application will be returned to the examiner for consideration of Applicants' election of species B, claims 16-23.

Any questions concerning this decision should be referred to Quality Assurance Specialist Teri Luu at (571) 272-7045.

Katherine Matecki

Katherine Matecki, Director
Technology Center 3600
(571) 272-5250

KM/tl: 03/22/11